

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

|   |   |                     |
|---|---|---------------------|
| AARON HOWARD, individually and on behalf of | ) |                     |
| all others similarly situated,              | ) |                     |
|   | ) | Case No. 08-CV-2804 |
| Plaintiff,                                  | ) |                     |
|   | ) |                     |
| v.  | ) |                     |
|   | ) |                     |
| THE BEAR STEARNS COMPANIES INC., THE        | ) |                     |
| BEAR STEARNS COMPANIES INC.                 | ) |                     |
| EXECUTIVE COMMITTEE, JAMES E. CAYNE,        | ) |                     |
| ALAN D. SCHWARTZ, WARREN J. SPECTOR,        | ) |                     |
| SAMUEL L. MOLINARO, JR., ALAN C.            | ) |                     |
| GREENBERG and JOHN DOES 1-10,               | ) |                     |
|   | ) |                     |
| Defendants.                                 | ) |                     |

[additional captions follow]

**NOTICE OF MOTION BY PLAINTIFFS AARON HOWARD AND SHELDEN  
GREENBERG TO: CONSOLIDATE ERISA ACTIONS; APPOINT INTERIM LEAD  
PLAINTIFFS, INTERIM CO-LEAD CLASS COUNSEL AND INTERIM LIAISON  
COUNSEL; AND FOR ENTRY OF PRETRIAL ORDER NO. 1**

ESTELLE WEBER, individually, on behalf of the  
Bear Stearns Companies Inc. Employee Stock  
Ownership Plan, and all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
CUSTODIAL TRUST COMPANY, JAMES  
CAYNE, ALAN SCHWARTZ, WARREN  
SPECTOR, SAMUEL MOLINARO, ALAN  
GREENBERG, and JOHN DOES 1-20,

Defendants.

Case No. 08-CV-2870 (RWS)

ANTHONY PISANO, individually and on behalf  
of all others similarly situated.

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
JAMES E. CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG, and  
JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-CV-3006 (UA)

HANS MENOS, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
JAMES CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG, and  
JOHN AND JANE DOES 1-10,

Defendants.

Case No. 08-CV-3035 (UA)

IRA GEWIRTZ, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
JAMES E. CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG, and  
JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-CV-3089 (RWS)

DREW V. LOUNSBURY, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

THE BEAR STEARNS COMPANIES INC.  
JAMES E. CAYNE; ALAN C. GREENBERG;  
ALAN D. SCHWARTZ; PAUL A. NOVELLY;  
FRANK T. NICKELL; FREDERIC V. SALERNO;  
VINCENT TESE; and JOHN AND JANE DOES 1-  
10,

Defendants.

Case No. 08-CV-3326 (UA)

SHELDEN GREENBERG, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

THE BEAR STEARNS COMPANIES INC.  
JAMES E. CAYNE; ALAN C. GREENBERG;  
JEFFREY MAYER; SAMUEL L. MOLINARO,  
JR., ALAN D. SCHWARTZ; WARREN J.  
SPECTOR; and JOHN AND JANE DOES 1-10,

Defendants.

Case No. 08-CV-3334 (UA)

SCOTT WETTERSTEN, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

THE BEAR STEARNS COMPANIES INC.,  
JAMES E. CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, ALAN C. GREENBERG, and JOHN  
AND JANE DOES 1-10,

Defendants.

Case No. 08-CV-3351 (UA)

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on \_\_\_\_\_ at \_\_\_\_:00 \_\_.m., or as soon thereafter as the matter may be heard, Plaintiffs Aaron Howard and Shelden Greenberg ("*Howard* Plaintiffs"), by the undersigned counsel, will move this Court to enter [Proposed] Pretrial Order No. 1: (1) consolidating the above captioned actions; (2) appointing Aaron Howard and Shelden Greenberg as Interim Lead Plaintiffs; (3) appointing Schifffrin Barroway Topaz & Kessler, LLP ("SBTK") and Keller Rohrback L.L.P. ("Keller Rohrback") as Interim Co-Lead Counsel; and (4) appointing Dealy & Silberstein, LLP as Interim Liaison Counsel. In support of Plaintiffs' motion, the Plaintiffs aver as follows:

1. Plaintiffs in the above-referenced class actions (the "ERISA Actions") filed Complaints for violations of the Employee Retirement Income Security Act of 1974 ("ERISA") against The Bear Stearns Companies Inc. ("Bear Stearns" or the "Company") and certain other fiduciaries of The Bear Stearns Companies Inc. Employee Stock Ownership Plan (the "Plan"), a retirement plan established and sponsored by Bear Stearns as a benefit for its employees. The ERISA Actions filed in this Court allege substantially similar ERISA breach of fiduciary duty claims and have overlapping classes of participants and beneficiaries of the Plan and seek to recover losses to the Plan from Defendants' breaches of their ERISA mandated fiduciary duties.

2. Specifically, Plaintiffs' claims arise from the failure of Defendants, who are fiduciaries of the Plan, to act solely in the interest of the Plan's participants and beneficiaries and to exercise the required care, skill, prudence, loyalty and diligence in administering the Plan and investment the Plan's assets. Plaintiffs allege that the Defendant fiduciaries, as identified and set forth in the Complaints, violated their fiduciary obligations to the Plan under ERISA §§ 404 and 405 of ERISA, 29 U.S.C. §§1104 and 1105, by, among other things:

- (a) Failing to prudently manage the assets of the Plan by maintaining shares of Bear Stearns stock for the Plan under circumstances in which Defendants could not have believed that continued investment in Bear Stearns stock was in keeping with how a prudent fiduciary would operate;
- (b) Failing to properly monitor the Plan and its fiduciaries;
- (c) Failing to provide participants with complete and accurate information regarding Bear Stearns stock, such that they could make informed decisions regarding shares of the stock allocated to them under the Plan; and
- (d) For co-fiduciary liability under ERISA § 405(a), 29 U.S.C. § 1105(a).

3. Plaintiffs seek relief pursuant to ERISA §§ 409 and 502(a)(2)-(3), 29 U.S.C. §§ 1109 and 1132(a)(2)-(3). Defendants are responsible for restoring losses sustained by the Plan as a result of Defendants' breaches of their fiduciary duties.

4. By this Motion, the *Howard* Plaintiffs respectfully move this Court for an Order formally setting forth procedures for the efficient management of the ERISA Actions, including the appointment of Interim Lead Plaintiffs and a leadership structure for Plaintiffs' counsel. Because the above-captioned ERISA Actions contain similar allegations and seek the same relief, in accordance with the *Annotated Manual for Complex Litigation* (4th ed. 2006) (the "*Manual*"), in addition to consolidation, it is appropriate for the Court to enter an order setting forth procedures for the management of these cases and appointing a leadership structure for Plaintiffs' counsel.

5. In accordance with the recommendations of the *Manual*, the *Howard* Plaintiffs submit for the Court's consideration a [Proposed] Pretrial Order No. 1 which: (i) consolidates the

related ERISA Actions; (ii) provides for the appointment of Interim Lead Plaintiffs and their counsel; (iii) describes the duties and obligations attributable to counsel thereunder; and (iv) directs counsel to confer regarding a preliminary schedule for these proceedings. Plaintiffs' Interim Co-Lead Counsel will coordinate and organize Plaintiffs in the conduct of this litigation, and will ensure that the interests of all Plaintiffs are represented in the prosecution of this action on behalf of the Class. Pursuant to Fed. R. Civ. P. 23(g)(3), SBTk and Keller Rohrback seek appointment as Interim Co-Lead Counsel and Dealy & Silberstein, LLP seeks appointment as Interim Liaison Counsel to act on behalf of the putative class before determining whether to certify the action as a class action.

6. This Motion is based on the accompanying Memorandum of Law, the Declarations of Edward W. Ciolko and Derek W. Loeser, and all papers and pleadings on file in this and the related cases filed with this Court.

Dated: April 7, 2008

Respectfully submitted,

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*Counsel for Sheldon Greenberg and  
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the Class.*



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

|   |   |                           |
|---|---|---------------------------|
| AARON HOWARD, Individually and On Behalf of<br>All Others Similarly Situated, | ) |                           |
|   | ) |                           |
| Plaintiff,  | ) | Case No. 08-CV-2804 (RWS) |
|   | ) |                           |
| v.  | ) |                           |
|   | ) |                           |
| THE BEAR STEARNS COMPANIES INC., THE  | ) |                           |
| BEAR STEARNS COMPANIES INC.   | ) |                           |
| EXECUTIVE COMMITTEE, JAMES E. CAYNE,  | ) |                           |
| ALAN D. SCHWARTZ, WARREN J. SPECTOR,  | ) |                           |
| SAMUEL L. MOLINARO, JR., ALAN C.  | ) |                           |
| GREENBERG and JOHN DOES 1-10,   | ) |                           |
|   | ) |                           |
| Defendants.   | ) |                           |
|   | ) |                           |

*[additional captions follow]*

**PLAINTIFFS AARON HOWARD AND SHELDEN GREENBERG'S [PROPOSED]  
PRETRIAL ORDER NO. 1 CONSOLIDATING THE ERISA ACTIONS, APPOINTING  
INTERIM LEAD PLAINTIFFS, INTERIM CO-LEAD COUNSEL AND INTERIM  
LIAISON COUNSEL**

ESTELLE WEBER, individually, on behalf of the  
Bear Stearns Companies Inc. Employee Stock  
Ownership Plan, and all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
CUSTODIAL TRUST COMPANY, JAMES  
CAYNE, ALAN SCHWARTZ, WARREN  
SPECTOR, SAMUEL MOLINARO, ALAN  
GREENBERG, and JOHN DOES 1-20,

Defendants.

Case No. 08-CV-2870 (RWS)

ANTHONY PISANO, individually and on behalf  
of all others similarly situated.

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
JAMES E. CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG, and  
JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-CV-3006 (UA)

HANS MENOS, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
JAMES CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG, and  
JOHN AND JANE DOES 1-10,

Defendants.

Case No. 08-CV-3035 (UA)

IRA GEWIRTZ, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
JAMES E. CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG, and  
JOHN AND JANE DOES 1-20,

Defendants.

Case No. 08-CV-3089 (RWS)

DREW V. LOUNSBURY, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

THE BEAR STEARNS COMPANIES INC.  
JAMES E. CAYNE; ALAN C. GREENBERG;  
ALAN D. SCHWARTZ; PAUL A. NOVELLY;  
FRANK T. NICKELL; FREDERIC V. SALERNO;  
VINCENT TESE; and JOHN AND JANE DOES 1-  
10,

Defendants.

Case No. 08-CV-3326 (UA)

SHELDEN GREENBERG, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

THE BEAR STEARNS COMPANIES INC.  
JAMES E. CAYNE; ALAN C. GREENBERG;  
JEFFREY MAYER; SAMUEL L. MOLINARO,  
JR., ALAN D. SCHWARTZ; WARREN J.  
SPECTOR; and JOHN AND JANE DOES 1-10,

Defendants.

Case No. 08-CV-3334 (UA)

SCOTT WETTERSTEN, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

THE BEAR STEARNS COMPANIES INC.,  
JAMES E. CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, ALAN C. GREENBERG, and JOHN  
AND JANE DOES 1-10,

Defendants.

Case No. 08-CV-3351 (UA)

Based on its consideration of the Motion by Plaintiffs Aaron Howard and Sheldon Greenberg (“*Howard* Plaintiffs”) for Consolidation of Related ERISA Actions and for Appointment of Interim Lead Plaintiffs, Interim Co-Lead Counsel and Interim Liaison Counsel, and any responses, argument, and authorities pertaining thereto, and the record in the above-captioned cases, the Court hereby ORDERS as follows:

1. Plaintiffs Aaron Howard and Sheldon Greenberg’s motion to consolidate is GRANTED. Accordingly, the following related actions are hereby consolidated for all purposes, pursuant to Fed. R. Civ. P. 42(a):

- *Howard v. Bear Stearns Cos. Inc., et al.*, No. 08-2804 (S.D.N.Y.);
- *Weber v. Bear Stearns Cos. Inc., et al.*, No. 08-2870 (S.D.N.Y.);
- *Pisano v. Bear Stearns Cos. Inc., et al.*, No. 08-3006 (S.D.N.Y.);
- *Menos v. Bear Stearns Cos. Inc., et al.*, No. 08-3035 (S.D.N.Y.);
- *Gerwitz v. Bear Stearns Cos. Inc., et al.*, No. 08-3089 (S.D.N.Y.);
- *Lounsbury v. Bear Stearns Cos. Inc., et al.*, No. 08-3326 (S.D.N.Y.);
- *Greenberg v. Bear Stearns Cos. Inc., et al.*, No. 08-3334 (S.D.N.Y.); and
- *Wettersten v. Bear Stearns Cos. Inc., et al.* No. 08-3351 (S.D.N.Y.)

Based on the Court’s review of the complaints on file in this action and the complaints in the above-captioned ERISA Actions, the lawsuits involve identical questions of law and fact, and consolidating these actions will avoid unnecessary waste of judicial resources and additional cost and delay to the parties.

2. The caption of these consolidated actions shall be “*In re: The Bear Stearns Cos. Inc. ERISA Litigation*” and the files of these consolidated actions shall be maintained in one file under Master File No. 08-CV-2804 (the “Consolidated Action”). Any other actions now pending

or later filed in this district which arise out of or are related to the same facts as alleged in the above-identified cases shall, until further order of this Court, be consolidated for all purposes pursuant to Fed. R. Civ. P. 42(a) into the Consolidated Action, if and when they are brought to the Court's attention.

3. All pleadings filed in the Consolidated Action, or in any separate action included herein, shall bear the following caption:

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE THE BEAR STEARNS COMPANIES  
INC. ERISA LITIGATION

) **MASTER FILE NO. 08-CV-2804**  
)  
)  
)  
)  
)  
)

4. When a pleading or other court paper filed in the Consolidated Action is intended to apply to all actions therein, the words “All Actions” shall appear immediately after the words “THIS DOCUMENT RELATES TO:” in the caption set out above. When a pleading or other court paper is intended to be applicable to less than all such actions, the party filing the document shall indicate, immediately after the words “THIS DOCUMENT RELATES TO:” the action(s) to which the document is intended to be applicable by last name of the plaintiff(s) and the docket number(s).

5. Aaron Howard and Sheldon Greenberg are appointed Interim Lead Plaintiffs.

6. Movant's selection of Schiffrin Barroway Topaz & Kessler, LLP ("SBTK") and Keller Rohrback L.L.P. ("Keller Rohrback") to serve as Interim Co-Lead Counsel is approved.

Schiffirin Barroway Topaz & Kessler, LLP and Keller Rohrback L.L.P. are hereby appointed Interim Co-Lead Counsel in the Consolidated Action.

7. Movant's selection of Dealy & Silberstein, LLP ("DS") to serve as Interim Liaison Counsel is approved. Dealy & Silberstein, LLP is hereby appointed Interim Liaison Counsel in the Consolidated Action.

8. Interim Co-Lead Counsel shall have the authority to perform or delegate the performance of the following matters on behalf of all Plaintiffs in the Consolidated Action:

- (a) directing, coordinating, and supervising the prosecution of Plaintiffs' claims in the Consolidated Action;
- (b) initiating, responding to, scheduling, briefing, and arguing all motions;
- (c) appearing at all hearings and conferences regarding the case;
- (d) determining the scope, order, and conduct of all discovery proceedings;
- (e) assigning work to Plaintiffs' counsel as necessary and appropriate under the circumstances;
- (f) retaining experts;
- (g) communicating with the Court;
- (h) communicating with Defendants' counsel;
- (i) conducting settlement negotiations on behalf of Named Plaintiffs and the class;
- (j) collecting and reviewing time and expense records from all Plaintiffs' counsel on a monthly basis and at the conclusion of the case, as necessary and appropriate under the circumstances, and submitting a fee and costs application;

(k) coordinating activities to avoid duplication and inefficiency in the filing, serving, and/or implementation of pleadings, other court papers, discovery papers, and discovery practice, and, generally, in the litigation; and

(l) performing such other duties that may be incidental to proper coordination of Plaintiffs' pretrial activities or authorized by further order of the Court.

9. Interim Co-Lead Counsel shall have authority to communicate with Defendants' counsel and the Court. Interim Co-Lead Counsel shall also have the authority to enter into agreements with Defendants' counsel that are binding on all Plaintiffs.

10. Interim Liaison Counsel shall act at the direction of Interim Co-Lead Counsel and shall assist Interim Co-Lead Counsel in facilitating coordination and communications among counsel for the parties and with the Court and otherwise assist in the coordination of discovery, presentations, at pretrial conferences and other pretrial activities.

11. To the extent any other Plaintiffs' counsel are designated by Interim Co-Lead Counsel to assist with the prosecution of this action, all such Plaintiffs' counsel shall keep contemporaneous time and expense records, in the form requested by Interim Co-Lead Counsel, and shall provide such records on a monthly basis to the Interim Co-Lead Counsel, or as otherwise requested by Interim Co-Lead Counsel.

12. Defendants may satisfy their service obligations under Fed. R. Civ. P. 5(a) by serving Interim Co-Lead Counsel.

13. Interim Co-Lead Counsel shall confer with counsel for Defendants and, within two weeks from the date of this Order, or as soon as practicable thereafter, Plaintiffs and Defendants shall submit a proposed preliminary schedule including the following:

- (a) The initial production of core ERISA documents and information that would enable Plaintiffs to accurately identify the specific persons who



serve as Plan fiduciaries, including, but not limited to: Plan documents and materials that describe the operation, administration, and management of the Plan; documents that identify the Plan fiduciaries and describe the scope of their fiduciary duties; and board and/or committee minutes and/or resolutions that pertain to the Plan and show the appointment or removal of Plan fiduciaries or otherwise demonstrate the fiduciary function of the board and/or any committee;

- (b) The date by which Plaintiffs will file a Consolidated Complaint;
- (c) The date by which Defendants will answer or otherwise respond to the Consolidated Complaint; and
- (d) The date by which Plaintiffs will move for Class certification.


IT IS SO ORDERED.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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UNITED STATES DISTRICT JUDGE

Presented by,  
**DEALY & SILBERSTEIN, LLP**



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